

WN-16J

Phil Argiroff, Chief
 Permits Section
 Water Resources Division
 Michigan Department of Environmental Quality
 525 West Allegan
 Post Office Box 30473
 Lansing, Michigan 48909-7973

Re: U.S. Environmental Protection Agency Review of the Proposed NPDES Permit for Aquila Resources Inc. – Back Forty Project MI0059945

Dear Mr. Argiroff:

The U.S. Environmental Protection Agency has reviewed Michigan Department of Environmental Quality's (MDEQ) Proposed National Pollutant Discharge Elimination System (NPDES) permit and MDEQ's response to comments for the proposed Aquila Resources, Inc. – Back Forty project that we received on February 1, 2017. Thank you for your response to EPA's comments on the draft NPDES permit for this facility.

We appreciate the revisions MDEQ has made to the draft permit in response to EPA's comments.

We have the following additional comments that we believe will make the requirements MDEQ is proposing more clear, enforceable and transparent.

Addition of mussel species to Part I, Section A.1.i. Acute Toxicity Final Requirements:

We are pleased to see that MDEQ added the mussel species *Amblema plicata* to the permit's Acute Toxicity Testing requirements.

Reopener Clause at Part I, Section A.1.j.

For simplicity, we have pasted the "reopener clause" language that MDEQ added to the permit and that contains requirements to conduct ambient monitoring as detailed in the Part 632 mining permit. We recommend that MDEQ provide additional clarity in the permit on the proposed ambient monitoring requirements. Ambient monitoring data is critically important for MDEQ to use to evaluate potential effects to water quality from the project, as well as to timely identify and evaluate any potential for unauthorized discharges that could occur. The information gathered from the ambient monitoring could be critical in making future permitting decisions based on the results. Even if the project is designed to the best and most current industry standards, it is still a new proposed mining project with inherent uncertainty regarding the potential for pollutants to migrate to surface waters that can be associated with mining. Including ambient monitoring requirements is consistent with federal regulations at 40 C.F.R. 122.44(i), 122.48(b) and 122.48(c).

Below is a summary of our recommended changes and suggested edits to the reopener clause (edits are in strikeout/underline).

1. The reopener clause refers to ambient monitoring requirements contained in the Part 632 mining permit. We reviewed specifically Section K (Environmental and Facility Monitoring) of the permit and Appendix G, which is the part of the permit application referenced in that section. We were unable to locate other figures, which are referenced in Section K of the permit (“Figure 63-1 of the Response, June 2016”, for example) and we recommend that you ensure correct citations to the necessary figures. Part K.3 of the Part 632 mining permit states that “the permittee shall monitor surface water quality quarterly...” and references a “Table 2-1 of the Environmental Monitoring Plan”.
 - As neither the Part 632 mining permit, the mining permit application, nor the proposed NPDES permit or fact sheet include a comprehensive figure that shows the locations where MDEQ is requiring the permittee to conduct ambient monitoring, we strongly recommend such a figure be included in a modified fact sheet for the NPDES permit, or added to the permit itself, and that an appropriate reference to it be added to the reopener clause.
2. Part K of the mining permit indicates that the permittee will submit annual reports to MDEQ for ambient monitoring. The mining permit does not indicate the format that the report will take nor how it will be made available to the public. As this is a highly visible and controversial project, we recommend that the reporting frequency be aligned with the monitoring frequency and that, accordingly, reporting should be on a quarterly basis.
 - We strongly recommend that MDEQ require the permittee, by revising the reopener clause, to report the results of the ambient monitoring to MDEQ quarterly so that the information can be made available via the MiWaters website quarterly and this information would then be available to the public in a timely manner.
3. Part K.4.c of the mining permit states: “current ambient monitoring stations selected by the company should be revisited on a periodic basis over the life of the discharge. To reduce the effects of seasonal variability, ambient monitoring should be conducted in the same season throughout the life of the facility operations.” This language seems to imply that the permittee would not necessarily be required to return to all of the ambient monitoring stations each quarter.
 - We recommend that the NPDES permit provide additional clarity on this matter so that it is clear that the permittee is required to visit all of the monitoring locations quarterly.

Below, we have recommended edits to the Reopener Clause.

j. Reopener Clause

As a condition of this permit, the permittee shall conduct ambient surface water monitoring as detailed in the Part 632 mining permit at Special Permit Conditions Paragraph K. Ambient monitoring locations are provided in the map enclosed with the NPDES permit fact sheet. The permittee shall conduct quarterly monitoring at each location for the parameters listed in Table 2.1 of the Environmental Monitoring Plan submitted with the Part 632 mining permit application and also provided in the NPDES permit fact sheet. The data shall be submitted on a quarterly basis via the Department’s MiWaters system. The MiWaters website is located at <https://miwaters.deq.state.mi.us>. The Department will evaluate the results of the quarterly ambient surface water monitoring and determine if modifications to the permit are needed to ensure protection of surface water quality.

When the Final Permit is prepared, please forward a copy and any significant comments received during any public notice period to r5npdes@epa.gov. Please include the permit number, the facility name, and

the words “Proposed Permit” in the message title. If you have any technical questions related to EPA’s review, please contact Krista McKim at (312) 353-8270 or at mckim.krista@epa.gov.

Thank you for cooperation during the review process.

Sincerely,

Kevin M. Pierard, Chief
NPDES Programs Branch

cc: Sylvia Heaton, MDEQ, electronically
Joe Maki, MDEQ, electronically

